

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

**101 PARK AVENUE
NEW YORK, NY 10178**

(212) 808-7800

FACSIMILE

(212) 808-7897

www.kelleydrye.com

GEOFFREY W. CASTELLO

DIRECT LINE: (973) 503-5922

EMAIL: gcastello@kelleydrye.com

WASHINGTON, DC
CHICAGO, IL
HOUSTON, TX
PARSIPPANY, NJ
SAN DIEGO, CA
LOS ANGELES, CA
STAMFORD, CT
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

January 23, 2020

By ECF

Hon. Ronnie Abrams, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Vanderwerff v. Quincy Bioscience Holding Co., Inc., et al.*
Case No. 1:19-cv-07582-RA
Karathanos v. Quincy Bioscience Holding Co., Inc., et al.
Case No. 1:19-cv-08023-RA
Spath v. Quincy Bioscience Holding Co., Inc., et al.
Case No. 1:19-cv-cv-03521

Your Honor:

This letter responds to the Court's January 7, 2020, endorsement requiring the parties in the above-referenced actions (the "Actions") to provide "any updates in the cases since December and whether there are any issues, beyond what was provided in the parties' December 16 letter, to be discussed at the conference" scheduled for January 27, 2020. (*Spath* Dkt. No. 49). The parties are prepared to discuss the matters set forth in their December 16, 2019, joint letter, and set a discovery schedule that roughly parallels the discovery schedule in the Federal Trade Commission ("FTC") and New York Attorney General ("NYAG") enforcement action pending before Judge Stanton in this District, captioned *FTC, et al. v. Quincy Bioscience Holding Co, Inc., et al.*, Case No. 1:17-cv-00124-LLC (the "FTC/NYAG Action").

There are two updates to the matters discussed in the parties' December 16 letter that we would like to bring to Your Honor's attention. First, as anticipated in the December 16 letter, on December 18, 2019, the Quincy Defendants filed a motion with the Judicial Panel on Multidistrict Litigation ("JPML") seeking to have *Engert v. Quincy Bioscience, LLC*, Case No. 1:19-cv-183-LY (W.D. Tex.), and *Collins v. Quincy Bioscience, LLC*, No. 19-cv-22864-MGC (S.D. Fla.) (the "Collins Action"), transferred to this Court and coordinated with the

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Vanderwerff, *Karathanos*, and *Spath* actions pending before Your Honor. Briefing is completed on the Quincy Defendants' transfer motion. The Quincy Defendants did not seek to transfer the FTC/NYAG action or the California class action captioned *Racies v. Quincy Bioscience, LLC*, Case No. 4:15-cv-00292-HSG (N.D. Cal.). The *Vanderwerff* and *Karathanos* plaintiffs conditionally agreed to the Quincy Defendants' JPML transfer motion, provided that the JPML also transfer the FTC/NYAG action to Your Honor. The *Spath* plaintiff agreed to the relief sought by the Quincy Defendants' JPML motion without any conditions. The *Engert* and *Collins* plaintiffs opposed the JPML motion. Quincy's motion is expected to be heard by the JPML at its hearing session on March 26, 2020, in Nashville, Tennessee.

Second, the earlier-filed *Racies* action was recently tried before a jury in the Northern District of California before the Honorable Haywood S. Gilliam several weeks ago. After two full days of deliberation, Judge Gilliam declared a mistrial on January 15, 2020, due to a deadlocked jury. The parties in that action have both filed motions for judgment as a matter of law and Quincy has filed a motion to decertify the California class. Those motions are fully briefed and scheduled to be heard by Judge Gilliam on February 14, 2020.

Additionally, the parties anticipate submitting a protective order for Your Honor's consideration shortly, which will be based upon the protective order negotiated in the FTC/NYAG Action. In the meantime, Defendants have agreed to produce to the Plaintiffs in these Actions all discovery exchanged and conducted in the *Collins* Action and the FTC/NYAG Action. Plaintiffs in these three Actions have agreed to treat that discovery as Confidential or Confidential – Attorney's Eyes Only, as reflected in the designations attached to such material, in anticipation of and in accordance with the protective order to be presented in the Actions.

We thank the Court for its attention to these matters and look forward to discussing them at the January 27, 2020 status conference.

Respectfully submitted,

KELLEY DRYE & WARREN LLP

/s/ Geoffrey W. Castello

Geoffrey W. Castello

Counsel for Defendants

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WILENTZ, GOLDMAN & SPITZER, P.A.

Kevin P. Roddy

MOTLEY RICE LLC

Daniel Lapinski

**Counsel for Plaintiffs Vanderwerff and
Karathanos**

KAMBERLAW, LLC

Scott A. Kamber

Counsel for Plaintiff Spath